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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
Against:

13 KELLY L. MACNEIL, R.C.P.
14 13320 Olive Tree Lane
15 Poway, CA 92064

16 Respiratory Care Practitioner License No. 22486

17 Respondent.

Case No. D1-2006-10

OAH No. 2008040008

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Stephanie Nunez (Complainant) is the Executive Officer of the
22 Respiratory Care Board of California. She brought this action solely in her official capacity and
23 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
24 California, by Douglas Lee, Deputy Attorney General.

25 2. Respondent KELLY L. MacNEIL, R.C.P. (Respondent) is represented in
26 this proceeding by attorney Samuel Spital, whose address is 8880 Rio San Diego Drive, Suite
27 800, San Diego, CA 92108-1642.

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3. On or about August 2, 2002, the Respiratory Care Board of California issued Respiratory Care Practitioner License No. 22486 to KELLY L. MacNEIL, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. D1-2006-10 and will expire on November 30, 2009, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. D1-2006-10 was filed before the Respiratory Care Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 15, 2008. Respondent timely filed her Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. D1-2006-10 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. D1-2006-10. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above, subject to all of the terms of this agreement.

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1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Petition to Revoke Probation No. D1-2006-10, if proven at a hearing, constitute cause for
4 imposing discipline upon her Respiratory Care Practitioner License No. 22486.

5 9. For the purpose of resolving the Petition to Revoke Probation without the
6 expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,
7 Complainant could establish a factual basis for the charges in the Petition to Revoke Probation,
8 and that Respondent hereby gives up her right to contest those charges.

9 10. Respondent agrees that her Respiratory Care Practitioner License is
10 subject to discipline and she agrees to be bound by the Board's imposition of discipline as set
11 forth in the Disciplinary Order below.

12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of
14 this proceeding, or any other proceedings in which the Board is involved, and shall not be
15 admissible in any other criminal or civil proceeding.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Board. Respondent
18 understands and agrees that counsel for Complainant and the staff of the Board may
19 communicate directly with the Board regarding this stipulation and settlement, without notice to
20 or participation by Respondent or her counsel. By signing the stipulation, Respondent
21 understands and agrees that she may not withdraw her agreement or seek to rescind the
22 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
23 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
24 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
25 the parties, and the Board shall not be disqualified from further action by having considered this
26 matter.

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13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 22486 issued to Respondent KELLY L. MacNEIL, R.C.P. (Respondent) remains revoked, with revocation stayed, subject to successful completion of three (3) years probation, pursuant to the Board's previous Order in Case No. R-2054, effective on or about May 31, 2007. Respondent's probation is further extended an additional six (6) months until November 30, 2010. All other terms and conditions of the Decision and Disciplinary Order in Case No. R-2054, except Conditions 1 [Competency Examination] and 2 [Education/Course Work], shall remain in full force and effect and are incorporated by reference as though fully set forth herein. In addition to those terms and conditions, respondent shall also be subject to the following terms and conditions:

1. COMPETENCY EXAMINATION Within six (6) months of the effective date of this Decision, Respondent shall pass the written competency examination as designated by the Board.

Respondent will be given two attempts to take and pass the written competency examination as designated by the Board.

Respondent must take the written competency examination as designated by the Board within three (3) months of the effective date of this decision.

In the event respondent does not pass the written competency examination on the first attempt, respondent must retake the written competency examination no less than 60 days after the first attempt but within six (6) months of the effective date of this Decision.

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At least ten (10) days prior to taking the written competency examination, Respondent shall receive written notification of the date of the examination.

The written competency examination shall be taken on the date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination.

Respondent's failure to successfully complete the examination within six (6) months of the effective date of this Decision, shall result in the revocation of her Respiratory Care Practitioner License No. 22486.

Failure to pay costs for the examination will constitute a violation of probation.

Any and all communications with respect to this condition shall be in writing and/or email. Furthermore, a copy of any and all communications shall be provided to Respondent's attorney, Samuel Spital, and Complainant's attorney, Douglas Lee, Deputy Attorney General.

2. EDUCATION/COURSE WORK Within one (1) year from the effective date of this Decision, Respondent shall successfully complete three (3) semester units (or its equivalent) of education course(s) in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course(s) selection shall be submitted to and approved by the Board within three (3) months from the effective date of this Decision. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course(s).

Respondent shall be required to submit proof of enrollment of the approved course(s) to the Board within 14 days of enrolling in the course. Every thirty (30) days thereafter, Respondent shall be required to provide written verification of course attendance to the Board. No later than thirty (30) days from the date the course(s) ends, Respondent shall be required to provide the Board with official transcripts identifying her successful completion of the course.

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1 Failure to timely and successfully complete approved course(s) at an approved
2 institution(s), or provide documentation thereof shall constitute a violation of probation.

3 Respondent is responsible for paying all costs associated with fulfilling this term
4 and condition of probation.

5 3. COST RECOVERY Respondent shall pay to the Board a sum not to
6 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,856.50
7 and shall be paid in full to the Board, in equal quarterly payments, within 12 months from the
8 effective date of this Decision. Cost recovery will not be tolled.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel Spital. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: June 9, 2008.

Original signed by: _____
KELLY L. MACNEIL, R.C.P.
Respondent

I have read and fully discussed with Respondent KELLY L. MacNEIL, R.C.P. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: June 9, 2008.

Original signed by: _____
SAMUEL SPITAL
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: June 9, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

STEVEN V. ADLER
Supervising Deputy Attorney General

Original signed by:
DOUGLAS LEE
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
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13320 Olive Tree Lane
Poway, CA 92064

Respiratory Care Practitioner License No. 22486

Respondent.

Case No. D1-2006-10

OAH No. 2008040008

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 20, 2008.

It is so ORDERED July 10, 2008.

Original signed by: _____

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA